

## Menshek, Peggy Y

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**From:** Dan Cohen <cohendan1@msn.com>  
**Sent:** Thursday, February 02, 2012 6:21 PM  
**To:** Clegg, Barry F.  
**Cc:** cohendan1@email.msn.com  
**Subject:** Re: Last Night's Meeting

I disagree. The fact is, the minutes of the January 4 meeting clearly state as follows: "Clegg ruled additional questions along this line out of order. It was not the Charter Commission's job to evaluate the substance of a proposal.....: their job was to perform the ministerial duty and either approve or disapprove the summary." Contrary to your ruling, Minnesota statues 410.12 Amendments, states: " The summary, together with a copy of the proposed amendment, shall first be submitted to the first be submitted to the charter commission for its approval as to form and substance."

There is nothing in the statute about ministerial duties.

Not just submitted as to form. Form and substance. And you ruled me out of order, for doing what exactly what the stature required us to do and for what the meetings clearly state I did, raise issues of substance. Frankly, the stuff your write here about Mayoral elections and property taxes and marijuana is irrelevant and misleading and not germane to the issue here.

You now state "And even if we did have the statutory duty to review the substance of an amendment, your questions at the January meeting were going beyond the amendment itself..." But, Chairman Clegg, as the minutes clearly state, you based your ruling me out of order, stating "it was not the Charter Commission's job to evaluate the substance of a proposal." If ,as you now concede, it may be the Commission's job to review the substance of a proposal, then you have a clear duty to withdraw your ruling that I was out of order, to so advise our fellow Commissioners and to apologize to me.

By the way, here's how the Oxford Desk Dictionary and Thesaurus defines substance: 1. particular kind of material having having uniform properties.2. reality; solidity. 3. content or essence as opposed to form, etc. 4. wealth and possessions.

Did you note 3? content or essence as opposed to form. They are separate. Thus we have separate and distinct duties relating to form and to substance. Your definition of substance bears a remarkable similarity to the definition of form. Oxford doesn't agree.

I might also add, I think commissioners have First Amendment rights to speak their mind on subject germanes, yes germane, to matters being considered without being called out of order.

Thank for your email. It does reflect an honest concern that you took my objections seriously and you have taken the trouble to address them. I respectfully request that you forward both yours and my emails to the other commissioners and, of course, to the city attorney's office. I would welcome their thoughts on the subject if they care to comment.

In a larger sense, my underlying concern is with the transparency issue. The Charter Commissioners shouldn't be the last people on earth with the right to have a say on what they think of the charter proposals that come before us. In my opinion, that's part of the job. Yes, we're obliged to vet the stuff as to form, but we're a citizen group. If all we are is a licensing bureau, who needs us? Staff is trained to handle that. As matters now stand, I think you would have us abdicate any inquiries beyond those of form, to the City Council and the press. I don't concur. We gotta do what we gotta do, but that shouldn't mean we don't have the right to discuss.

Okay, enough. Thanks, again for you thoughts. Now you know why I love City Hall.

**From:** Clegg, Barry F.  
**Sent:** Thursday, February 02, 2012 9:57 AM  
**To:** 'Cohendan1@msn.com' (Cohendan1@msn.com)'  
**Subject:** Last Night's Meeting

Dan – I wanted to follow up on last night's discussion. I have taken a look at the statute's language as well and, as you know, it provides that "The summary, together with a copy of the proposed amendment, shall first be submitted to the Charter Commission for its approval as to form and substance." I agree with the City Attorney that our "substance review" is to insure that the summary accurately reflects the proposed amendment. If someone submits a 10,000 word amendment that has the effect of increasing property taxes but the summary states that property taxes will go down, it's our job to correct the summary. I think that's the whole point of having them provide the summary to us in the first place. Note that, if they don't have a summary (i.e. proposed amendment less than 1000 words), they don't have to come to us at all, they can just go out and gather signatures. To me, that makes it clear that our duty is to review the summary and make sure it accurately reflects the substance of the full amendment and that's the way the Charter Commission has interpreted that provision for the several petitions that have been put forward during my time on the Commission. And, in this case, we determined the proposed question was not eligible for a summary, hence nothing to review substantively.

The statute does not assign us the duty or give us the authority to weigh in on whether we like the content of a particular amendment. If someone proposes that the mayor serves for one month terms and they get the right number of signatures, it goes on the ballot, and we have neither the duty or the right to hold it up for a "substance review." The City Attorney has advised us that, even when a petition amendment is not legal (like the one requiring the City to set up medical marijuana distribution stations), we don't have the ability ourselves to refuse to put the question on the ballot – that power is reserved to the City Council (and that's we recommended that they do and is what they did).

You indicated you believe we have a duty of inquiry in the name of transparency. I believe we have the duties assigned to us by statute and can't invent more, even for the honorable goal of transparency in government. And even if we did have the statutory right to review the substance of an amendment, your questions at the January meeting were going beyond the amendment itself and were aimed at who was supporting and financing that particular amendment, which to me, is clearly beyond the scope of our duty and our authority.

I know we disagree on these issues. You can certainly speak your mind in debate. You can vote against a motion or make a motion yourself. You can challenge the ruling of the Chair and, if you wish, you can run for Chair when we next have elections. And while you can always propose to amend the minutes, I think the January minutes did accurately reflect what happened and, even if what happened was a bad ruling or a misinterpretation of the statute (which I don't think it was), the minutes are a historical record and should reflect what actually occurred, not what should have occurred.

I am sending this only to you because I wanted to let you know the basis for my positions on these issues. If you wish to share this with others, that is fine with me. And though we disagree on this particular issue, I look forward to working with you on the Charter Commission.

Barry

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